

House Bill 604

By: Representatives Byrd of the 20th, England of the 108th, and Holt of the 112th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to
2 annexation of territory, so as to provide for the comprehensive revision of annexation
3 procedures; to provide for legislative intent; to provide for statutory construction; to change
4 certain provisions regarding the effective date of annexation; to change certain provisions
5 regarding reporting requirements; to change certain provisions regarding unincorporated
6 islands; to change certain provisions regarding land use objections; to specify procedures
7 with respect to the provision of services within areas to be annexed; to specify annexation
8 compliance procedures; to provide for fees and costs; to provide for criminal penalties; to
9 provide for status of certain actions; to provide for annexation contests; to redefine contiguity
10 and to change certain provisions regarding the 100 percent method; to change certain
11 provisions regarding the 60 percent method; to change certain provisions regarding
12 definitions and procedures with respect to annexation of unincorporated islands; to provide
13 for related matters; to provide an effective date; to repeal conflicting laws; and for other
14 purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to annexation of
18 territory, is amended by adding a new Code section to read as follows:

19 "36-36-1.1.

20 (a) Notwithstanding any other provision of this chapter, it is declared to be the policy of
21 this state that:

22 (1) Municipal annexation is authorized to accommodate the natural growth of a
23 community through the provision of urban services not otherwise available to residents
24 and property owners outside municipal boundaries; and

25 (2) Annexation is not authorized when the primary objective or purpose of an annexation
26 is the generation of new municipal revenues rather than community building.

(b) The provisions of this chapter shall be strictly construed to ensure than any annexation is mutually beneficial for all affected parties and does not occur at the expense of counties, county school districts, or unincorporated residents affected by the annexation."

SECTION 2.

Said chapter is further amended by revising Code Section 36-36-2, relating to effective date of annexation, as follows:

"36-36-2.

(a) ~~Except as provided in subsection (c) of this Code section, all~~ All annexation other than by local Act shall become effective ~~for ad valorem tax purposes~~ on December 31 of the year during which such annexation ~~occurred and for all other purposes shall become effective on the first day of the month following the month during which the requirements of Article 2, 3, or 4 of this chapter, whichever is applicable, have been met~~ is approved by the governing authority of the annexing municipality.

(b) ~~Except as provided in subsection (c) of this Code section, annexation~~ Annexation by local Act shall become effective ~~for ad valorem tax purposes~~ on December 31 of the year in which such local Act is approved by the Governor or becomes law without such approval ~~and for all other purposes shall become effective at the time such local Act becomes effective or such later date as provided in such local Act.~~

~~(c)(1) Where an independent school system exists within the boundaries of a municipality, other effective dates may be established by the municipality solely for the purpose of determining school enrollment.~~

~~(2) Unless otherwise agreed in writing by a county governing authority and the municipal governing authority, where property zoned and used for commercial purposes is annexed into a municipality with an independent school system, the effective date for the purposes of ad valorem taxes levied for educational purposes shall be December 31 of the year after the year in which the requirements of Article 2, 3, or 4 of this chapter, whichever is applicable, have been met."~~

SECTION 3.

Said chapter is further amended by revising subsections (a), (b), and (c) of Code Section 36-36-3, relating to reports identifying annexed property, as follows:

"(a) The clerk, city attorney, or other person designated by the governing authority of any municipality annexing property shall file a report identifying any property annexed with the Department of Community Affairs and with the county governing authority of the county in which the property being annexed is located. Such reports shall be filed, at a minimum, not more than 30 days following the last day of the quarter in which the

annexation becomes effective but may be filed more frequently. Each report shall include the following:

(1) The legal authority under which the annexation was accomplished, which shall be the ordinance or resolution number for any annexation effected pursuant to Article 2, 3, 4, or 6 of this chapter or the Act number if effected by local Act of the General Assembly;

(2)(A) A unique identification number for each annexation, which may be the same as the ordinance, resolution, or Act number as described in the preceding paragraph; The the name of the county in which the property being annexed is located; the total acreage being annexed; the enactment date and effective date of the annexation ordinance, resolution, or local Act of the General Assembly; and

(B) A procedure and standards for identifying annexed properties; such procedure and standards shall be established by the Department of Community Affairs and shall ensure that annexed properties are fully and clearly identified such that all services and functions of any affected county, school district, and municipality can be properly carried out and not impaired in any way by a change in boundaries as soon as the annexation is effective; and

(3) A letter from the governing authority of any municipality annexing property stating their intent to add the annexed area to maps provided by the United States Bureau of the Census during their next regularly scheduled boundary and annexation survey of the municipality and stating that the survey and map will be completed as instructed and returned to the United States Bureau of the Census.

(b) The submission of a report required under subsection (a) of this Code section shall be made in writing and ~~may~~ shall also be made in electronic format, ~~at the discretion of the submitting municipality~~ if so specified by the Department of Community Affairs.

(c)(1) The Department of Community Affairs shall notify the clerk, city attorney, or other person designated by the governing authority of the annexing municipality within 30 days after receipt of a report submitted under subsection (a) of this Code section if it determines the submission to be incomplete. The annexing municipality shall file a corrected report with the department and the county governing authority where the annexed property is located within 45 days from the date of the notice of any deficiency.

(2) No annexed area shall be added to the state map until such report has been properly submitted to the Department of Community Affairs. The Department of Community Affairs shall not provide a certification of annexation to the United States Census Bureau unless the governing authority of the annexing municipality has filed a completed report as required under subsection (a) of this Code section.

(3) Compliance with the requirements of this Code section shall be construed ~~to be merely ancillary to and not~~ strictly as an integral part of the annexation procedure such

that an annexation shall, ~~if otherwise authorized by law, become effective even though~~
~~required filings under this Code section are temporarily delayed~~ be voided if the filings
required by this Code section are not submitted in accordance with procedures and
standards adopted by the Department of Community Affairs."

SECTION 4.

Said chapter is further amended by revising Code Section 36-36-4, relating to creation of unincorporated islands, as follows:

"36-36-4.

(a) As used in this Code section, the term:

(1) 'County road' means a road designated as part of a county road system as provided
in Code Section 32-4-40.

(2) 'No reasonable means of physical access' means that after a parcel of land is annexed,
there would be an unincorporated area of the county where no county road connects that
unincorporated area to the remainder of the unincorporated area of the county without
passing through an incorporated area.

(3) 'Unincorporated island' shall have the same meaning as contained in paragraph (3)
of Code Section 36-36-90.

(b) The creation of unincorporated islands as described in paragraph (1), (2), or (3) of this subsection shall be prohibited:

(1) Annexation or deannexation which would result in the creation of an unincorporated area with its aggregate external boundaries abutting the annexing municipality;

(2) Annexation or deannexation which would result in the creation of an unincorporated area with its aggregate external boundaries abutting any combination of the annexing municipality and one or more other municipalities; or

(3) Annexation or deannexation which would result in the creation of an unincorporated area to which the county would have no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county.

~~(b)(c)~~ When requested by resolution of the county governing authority, a municipality is authorized to provide any service or exercise any function within an unincorporated island. Such authority shall be in addition to any other authority of the municipality to provide extraterritorial services or functions. ~~For purposes of this subsection, 'unincorporated island' shall have the same meaning as contained in paragraph (3) of Code Section 36-36-90."~~

SECTION 5.

Said chapter is further amended by revising Code Section 36-36-11, relating to procedures for addressing land use objections by counties, in its entirety as follows:

"36-36-11.

(a) Article IX, Section II, Paragraph IV of the state Constitution provides that counties and municipalities may adopt plans and exercise the power of zoning within their boundaries. Furthermore, Chapter 70 of this title requires the preparation of coordinated and comprehensive plans by each local jurisdiction, the authorized implementation of land use regulations consistent with such comprehensive plans, and that plans prepared by counties and municipalities within each county be compatible and nonconflicting. The intent of this Code section is to recognize that comprehensive plans prepared by counties and municipalities reflect the will of the citizens of the respective local governments in this state and, further, to provide for a rational transition of land use planning and regulatory considerations exercised by a county to the exercise of those powers by a municipality whenever unincorporated areas of a county are annexed into a municipality.

(b) Notwithstanding the provisions of subsection (c), paragraph (2) of Code Section 36-36-3 limiting the territorial boundaries for the exercise of zoning powers by counties, on and after March 1, 2007, whenever property in the unincorporated area of a county is annexed to a city pursuant to Chapter 36 of this title, zoning decisions applicable to such property shall be made concurrently by the governing authority of the annexing municipality and the governing authority of the county within which the property is located for a period of five years following the effective date of the annexation.

(c) Unless a county or municipality agree otherwise, the concurrent zoning decisions required by this Code section shall be subject to the land use element of the county as it applies to the parcel or parcels of land annexed at the time of the annexation. If the next scheduled update of the county and municipal comprehensive plans pursuant to the minimum standards and procedures of the Department of Community Affairs occurs within the five-year time period specified in subsection (b) of this Code section, the land use element applicable to the annexed territory shall be established by concurrent action of the municipality and affected county."

SECTION 6.

Said chapter is further amended by adding a new Code section to read as follows:

"36-36-12.

(a) A municipal corporation exercising authority under Article 2 or Article 3 of this chapter shall make plans for the extension of services to the area proposed to be annexed and shall prepare a report setting forth its plans to provide services to such area, which

1 report shall be presented in a public hearing to be held between 15 and 30 calendar days
2 prior to the meeting at which a decision to annex property will be held. Such meeting shall
3 be advertised at least two times in the legal organ of the jurisdiction at least 15 but no more
4 than 30 calendar days prior to the hearing. At least seven calendar days shall separate the
5 two advertised notices.

6 (b) The report required in subsection (a) of this Code section shall include:

7 (1) A map or maps of the municipal corporation and adjacent territory showing the
8 present and proposed boundaries of the municipal corporation, the present major trunk
9 water mains and sewer interceptors and outfalls, the proposed extensions of such mains
10 and outfalls as required in paragraph (2) of this subsection, and the general land use
11 pattern in the area to be annexed; and

12 (2) A statement setting forth the plans of the municipal corporation for extending to the
13 area to be annexed each major municipal service performed within the municipality at the
14 time of annexation.

15 (c) The plans required in subsection (a) of this Code section shall:

16 (1) Provide for extending police protection, fire protection, garbage collection, and street
17 maintenance services to the area to be annexed, on the date of annexation, on
18 substantially the same basis and in the same manner as such services are provided within
19 the rest of the municipality prior to annexation. If a water distribution system is not
20 available in the area to be annexed, the plans must call for reasonable, effective fire
21 protection services until such time as water lines are made available in such area under
22 existing municipal policies for the extension of water lines;

23 (2) Provide for extension of major trunk water mains and sewer outfall lines into the area
24 to be annexed so that when such lines are constructed, property owners in the area to be
25 annexed will be able to secure public water and sewer service according to the policies
26 in effect in such municipality for extending water and sewer lines to individual lots or
27 subdivisions;

28 (3) If extension of major trunk water mains and sewer outfall lines into the area to be
29 annexed is necessary, set forth a proposed timetable for construction of such mains and
30 outfalls as soon as possible following the effective date of annexation. In any event, the
31 plans shall call for contracts to be let and construction to begin within 18 months
32 following the effective date of annexation;

33 (4) Set forth the methods under which the municipal corporation plans to finance
34 extension of services into the area to be annexed;

35 (5) Provide that services required pursuant to this Code section may be provided by the
36 annexing municipality or through an intergovernmental agreement with another local

1 government whereby the required services will be provided in a manner consistent with
2 the requirements of this Code section; and

3 (6) Provide that if the annexing municipality is unable to or does not provide fire
4 protection, law enforcement, garbage collection or street maintenance services to the area
5 annexed as of the date of annexation as required by this subsection, any other government
6 providing such service to the annexed area shall be fully reimbursed by the annexing
7 municipality for the costs of providing such services to the annexed area. In the event
8 there is a disagreement as to the cost of services provided by the government providing
9 the service, the question shall be submitted to a special master appointed by the chief
10 judge of the superior court. The special master shall determine the actual costs the
11 annexing municipality shall pay to the government providing the service in the absence
12 of the annexing municipality doing so. The decision of the special master shall be
13 rendered within 30 calendar days of the appointment. The annexing municipality shall
14 reimburse the local government providing the service the amount specified by the special
15 master within 30 calendar days of such decision."

16 **SECTION 7.**

17 Said chapter is further amended by adding a new Code section to read as follows:

18 "36-36-13.

19 (a) The superior courts of this state shall have jurisdiction to enforce compliance with the
20 provisions of this chapter, including the power to grant injunctions or other equitable relief.
21 An action may be brought by any person or county governing authority affected or
22 potentially affected by an annexation.

23 (b) In any action brought to enforce the provisions of this chapter in which the court
24 determines that a municipality acted without substantial justification in not complying with
25 this chapter, the court shall, unless it finds that special circumstances exist, assess in favor
26 of the complaining party reasonable attorney's fees and other reasonably incurred litigation
27 costs. Whether the position of the complaining party was substantially justified shall be
28 determined on the basis of the record as a whole which is made in the proceeding for which
29 fees and other expenses are sought.

30 (c) Any public official knowingly and willfully participating in adoption of an annexation
31 resolution or ordinance that would result in an annexation which violates the requirements
32 of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished
33 by a fine not to exceed \$500.00.

34 (d) Any official action by a municipality in violation of this chapter shall be void. Any
35 action contesting an annexation must be commenced within 90 days of the date the
36 contested annexation was approved by the governing authority of the municipality if the

annexation is approved after April 1, 2007. If the contested annexation was approved prior to April 1, 2007, the action contesting an annexation must be commenced prior to July 1, 2008."

SECTION 8.

Said chapter is further amended by revising Code Section 36-36-20, relating to the definition of "contiguous area," as follows:

"36-36-20.

(a) As used in this article, the term 'contiguous area' means, at the time the annexation procedures are initiated, any area that meets the following conditions:

(1) At least ~~one-eighth~~ one-fourth of the aggregate external boundary or ~~50~~ 150 feet of the area to be annexed, whichever is ~~less~~ more, either abuts directly on the municipal boundary or would directly abut on the municipal boundary if it were not otherwise separated from the municipal boundary ~~by lands owned by the municipal corporation or some other political subdivision, by lands owned by this state, or~~ by the definite width of:

(A) Any street or street right of way;

(B) Any creek or river; or

(C) Any right of way of a railroad or other public service corporation

which divides the municipal boundary and any area proposed to be annexed;

(2) The entire parcel or parcels of real property owned by the person seeking annexation is being annexed; provided, however, that lots shall not be subdivided in an effort to evade the requirements of this paragraph; and

(3) The private property annexed, excluding any right of way of a railroad or other public service corporation, complies with the annexing municipality's minimum size requirements, if any, to construct a building or structure occupiable by persons or property under the policies or regulations of the municipal development, zoning, or subdivision ordinances.

(b) Notwithstanding the limitations of subsection (a) of this Code section, an area may be annexed by agreement between the municipal corporation and the governing body of the county in which the territory proposed to be annexed is located.

~~(c) If, at the time annexation procedures are initiated, the entire area to be annexed is owned by the municipal governing authority to which the area is to be annexed and if the annexation of municipally owned property is approved by resolution of the governing authority of the county wherein the property is located, then the term 'contiguous area' shall mean any area which, at the time annexation procedures are initiated, abuts directly on the municipal boundary or which would directly abut on the municipal boundary if it were not~~

1 ~~otherwise separated from the municipal boundary by lands owned by the municipal~~
2 ~~corporation or some other political subdivision, by lands owned by this state, or by the~~
3 ~~definite width or by the length of:~~

4 ~~(1) Any street or street right of way;~~

5 ~~(2) Any creek or river; or~~

6 ~~(3) Any right of way of a railroad or other public service corporation~~

7 ~~which divides the municipal boundary and any area proposed to be annexed."~~

8 SECTION 9.

9 Said chapter is further amended by revising Code Section 36-36-21, relating to the authority
10 of municipality to annex, as follows:

11 "36-36-21.

12 Authority is granted to the governing bodies of the several municipal corporations of this
13 state to annex to the existing corporate limits thereof unincorporated areas contiguous to
14 the existing corporate limits at the time of such annexation, in accordance with the
15 procedures provided in this article and in Article 1 of this chapter, upon the written and
16 signed applications of all of the owners of all of the land, ~~except the owners of any public~~
17 ~~street, road, highway, or right of way,~~ proposed to be annexed, containing a complete
18 description of the lands to be annexed. Lands to be annexed at any one time shall be treated
19 as one body, regardless of the number of owners, and all parts shall be considered as
20 adjoining the limits of the municipal corporation when any one part of the entire body abuts
21 such limits. When such application is acted upon by the municipal authorities and the land
22 is, by ordinance, annexed to the municipal corporation, an identification of the property so
23 annexed shall be filed with the Department of Community Affairs and with the governing
24 authority of the county in which the property is located in accordance with Code Section
25 36-36-3. When so annexed, such lands shall constitute a part of the lands within the
26 corporate limits of the municipal corporation as completely and fully as if the limits had
27 been marked and defined by local Act of the General Assembly. ~~Except as provided in~~
28 ~~subsection (c) of Code Section 36-36-20, nothing~~ Nothing in this article shall be construed
29 to authorize annexation of the length of any public right of way except to the extent that
30 such right of way adjoins private property otherwise annexed by the municipal
31 corporation."

32 SECTION 10.

33 Said chapter is further amended by revising subsection (f) of Code Section 36-36-32, relating
34 to application requirements, in its entirety as follows:

~~"(f) Signatures of owners of public roads and other public land within the area to be annexed shall not be required in satisfying the requirements of subsection (a) of this Code section and the acreage of such public properties shall be excluded from acreage calculations pertaining to the landowner approval required by subsection (a) of this Code section. This subsection applies only where the public properties are included in the area to be annexed~~ Reserved."

SECTION 11.

Said chapter is further amended by revising Code Section 36-36-90, relating to definitions, as follows:

"36-36-90.

As used in this article, the term:

(1) 'Contiguous area' means any unincorporated area which, on or after January 1, 1999, had an aggregate external boundary directly abutting a municipal boundary. Any area shall be considered 'contiguous' if the aggregate external boundary would directly abut the municipal boundary if not otherwise separated, in whole or in part, from the municipal boundary by lands owned by the municipal corporation, by lands owned by a county, or by lands owned by this state or by the definite width of:

(A) Any street or street right of way;

(B) Any creek or river; or

(C) Any right of way of a railroad or other public service corporation.

~~(2) 'Municipal corporation' means a municipal corporation which has a population of 200 or more persons according to the United States decennial census of 1980 or any future such census.~~

~~(3)~~ 'Unincorporated island' means:

(A) An unincorporated area in existence on January 1, 1991, with its aggregate external boundaries abutting the annexing municipality;

(B) An unincorporated area in existence as of January 1, 1991, with its aggregate external boundaries abutting any combination of the annexing municipality and one or more other municipalities; or

(C) An unincorporated area in existence as of January 1, 1991, which the county governing authority has by resolution adopted not later than 90 days following ~~July 1, 1992~~ December 31, 2008, that identifies any unincorporated area of the county to which the county has no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county."

SECTION 12.

Said chapter is further amended by revising subsections (a) and (d) of Code Section 36-36-92, relating to unincorporated islands, as follows:

"(a) Upon receipt of a resolution by the county governing authority within which a municipality is located, the ~~The~~ governing body of ~~each~~ such municipal corporation of ~~the~~ this state ~~may~~ shall annex to the existing corporate limits thereof all or any portion of unincorporated islands designated in such resolution by the county governing authority and which are contiguous to the existing limits at the time of such annexation upon compliance with the procedures set forth in this article and in accordance with the procedures provided in Article 1 of this chapter. The provisions of this Code section shall apply to all unincorporated islands in existence as of March 1, 2007. Except as provided in subsection (d) of this Code section, all unincorporated islands shall be annexed to the existing limits of the municipality no later than December 31 of the year in which a resolution of the county governing authority is delivered to the affected municipal governing authority."

~~"(d) Annexations under this article shall be at the sole discretion of the governing body of each municipality~~ No annexation under this article shall be effective for a particular unincorporated island where more than 50 percent of owners of property within any such unincorporated island sign a petition objecting to the annexation. Any such petition shall be submitted to the governing authority of the municipality after the notice provided for in subsection (b) of this Code section and prior to adoption of the annexation ordinance. A petition form shall be prepared by the governing authority of each municipality that is exercising its responsibilities under this Code section. Copies of the form shall be made available to property owners within any unincorporated islands that request such a form."

SECTION 13.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 14.

All laws and parts of laws in conflict with this Act are repealed.